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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-1556

CANRON, INC.,

Petitioner,

v.

PLASSER AMERICAN CORPORATION,

Respondent.

PETITIONER'S REPLY BRIEF IN RESPONSE TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Respondent's Brief in Opposition predictably states that this dispute involves only a minor patent and that it is a "routine" case, "of interest only to the litigants." This is erroneous. This case presents a substantive issue of great significance to the American patent system, as to which a clear and direct conflict exists between the various Courts of Appeals. The Court of Appeals for the

Fourth Circuit held that anticipation under 35 U.S.C. 102(b) can be based on the additive disclosure of two or more references, contrary to its often quoted case *Tights, Inc. v. Acme-McCrary Corp.*, 541 F.2d 1047 (4th Cir. 1976).

Respondent's Brief also seeks to direct this Court's attention away from the aforesaid conflict by contending that the Petitioner's patent here *was* in fact anticipated in one or more single references. This contention, however, stands in direct opposition to the facts found by the Trial Court, as demonstrated in the chart on page 4 of the Petition. Significantly, Respondent does not challenge the correctness of that chart and it instead sets forth in its Brief its own interpretation of the evidence below. The present proceeding, however, is hardly an appropriate forum for that type of presentation and the Petitioner submits that this Court should instead direct its attention to the actual findings below, as summarized in the aforesaid chart.

If, however, the Court nevertheless finds it necessary to go behind the findings below, it must then recognize that the Respondent's discussion of the evidence is misleading in a number of critical areas.

Thus, Respondent's statement, in the second full paragraph on page 2 of its Brief, that Exhibits U, A-20, and B-20 are publications which provide identical disclosures to the patent in suit is plainly false. The Trial Court found only two claim elements in Exhibit U. The Trial Court found only four claim elements in Exhibit A-20. The Trial Court found less than all of the claim elements in Exhibit B-20. Furthermore, summation of the claim elements disclosed in Exhibits B-20, A-20, and U still does *not* provide disclosure of all of the claim elements.

The characterization of a short article in German (Exhibit U), a sketch or drawing with a short description in French (Exhibit A-20), and a brochure in French (Exhibit B-20) as a series so as to constitute one document is clearly without support. Even if "serialized," no anticipation would result as there is still no disclosure of claim element (j) of Claim 1 and claim elements (i) through (l) of Claim 11.

Respondent's statement, in the third full paragraph of page 2 of Respondent's Brief, that anticipation is provided by the prior art publications, either singly or as a group, is totally in error. None of the references were found by the Trial Court to disclose all of the claim elements.

Referring to the paragraph bridging paragraphs 2 and 3 of Respondent's Brief, the publication which was found to have been distributed more than one year prior to the U.S. filing date, i.e., the B-13 brochure (Exhibit B-20) was not found by the Trial Court either to anticipate the claims in suit or to disclose all of the elements thereof. The chart contained in the Petition clearly shows the failure of the B-13 brochure to disclose elements (h) and (j) of Claim 1 and elements (i) through (l) of Claim 11.

Referring to the second full paragraph on page 3 of Respondent's Brief, the allegation therein that Respondent's patent Exhibit 86 also anticipated Petitioner's patent is clearly false. Resort to the chart provided in the Petition clearly discloses that the Trial Court did not find disclosure of all of the claim elements in Exhibit 86. In particular, the Trial Court did not find that Exhibit 86 disclosed element (j) of Claim 1 or elements (h) and (k) of Claim 11.

While the Trial Court held that all of the elements of the claims were anticipated because they were found separately in various prior art references, the Trial Court did not hold that any one reference or any specifically defined group of references were anticipatory. There was no finding or conclusion of obviousness.

Petitioner again respectfully submits that its Petition brings to this Court subject matter which is of substantial importance, not only to the litigants, but to the jurisprudence of the country as a whole, and again requests that its petition be granted.

Respectfully submitted,

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